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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

SITCUM WATERWAY OF THE COMMENCEMENT
BAY NEARSHORE/TIDEFLATS SUPERFUND SITE

PORT OF TACOMA,

RESPONDENT

Proceeding Under Sections 104, 122(a),
and 122(d)(3) of the Comprehensive
Environmental Response, Compensation,
and Liability Act as amended,
42 U.S.C §§ 9604, 9622(a),
9622(d)(3)).

U.S. EPA Docket No.
1091-01-04-122

ADMINISTRATIVE ORDER
ON CONSENT FOR
REMEDIAL DESIGN STUDY

I. INTRODUCTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and the Port of Tacoma (Respondent). The Order concerns the preparation of, performance of, and reimbursement of oversight costs for a Remedial Design (RD). The RD is to be performed for the Remedial Action (RA) of an operable unit consisting of the Sitcum Waterway problem area (Sitcum or the Site) and other areas of the Commencement Bay Nearshore/Tideflats (CB/NT) sediments operable unit of the CB/NT Superfund Site.

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II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3), which authorizes the President to issue an order setting forth the obligations of the Respondent with respect to a settlement agreement for action under Section 104(b) of CERCLA. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C; and redelegated by the Regional Administrator to EPA Region 10 Superfund Branch Chief on September 27, 1990.

3. Respondent agrees to undertake all activities required by the terms and conditions of this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondent consents to, and agrees not to contest, the authority or jurisdiction of EPA, in accordance with the delegations set forth above, to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Order shall apply to and be binding upon EPA and Respondent, its agents, successors, assigns, commission, principals, and employees. Where this Order creates duties upon

Respondent, any directory language, including the words "will," or "shall", when used in reference to any action to be taken by EPA, is intended only, and shall be interpreted, as condition(s) precedent to Respondent's duty(s), and not as any duty of EPA to act, or to act within a specified time period. The signatory to this Order on Respondent's behalf certifies that he or she is authorized to execute and legally bind Respondent to this Order. No change in ownership, business organization, or other status of Respondent, or of the facility, shall alter Respondent's duties under this Order.

5. Respondent shall provide a copy of this Order to any subsequent owners or successors in interest before any ownership rights in the Site are transferred. Respondent shall notify EPA at least thirty (30) days prior to any such transfer. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to perform any work under this Order, within fourteen (14) days after the effective date of this Order, or the date such services are retained, whichever is later, and shall condition all contracts entered into hereunder to performance of the work in conformity with the terms of this Order. Any reference herein to the Order shall mean the Order, any Appendix thereto, any future modifications as provided by the terms of the Order as may be added hereafter, and any work plans, reports, plans, specifications, schedules, and appendices required by this Order which, upon approval of EPA, shall be incorporated into and enforceable under

1 the Order. Notwithstanding the terms of any contract, Respondent
2 is responsible for compliance with this Order and for ensuring that
3 its subsidiaries, employees, contractors, consultants,
4 subcontractors, agents and attorneys comply with this Order.

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6 IV. STATEMENT OF PURPOSE

7 6. In entering into this Order, the objectives of EPA and
8 Respondent are: (a) to design the remedial action for the Sitcum
9 consistent with the Record of Decision of the CB/NT Sediments
10 Operable Unit that was issued by EPA on September 29, 1989 (the
11 ROD), and perform any analyses and studies needed by EPA to approve
12 the design of the remedy in phases for attaining Sediment Cleanup
13 Objectives identified in the ROD.; (b) to collect and present
14 information needed by the federal, tribal, and state natural
15 resource trustees (the Trustees) to aid the Trustees' determination
16 of injury to natural resources and the assessment of natural
17 resource damages within the Sitcum, Blair and Milwaukee Waterways;
18 (c) to facilitate implementation of the Puyallup Settlement
19 Agreement; and (d) provide for recovery by EPA of its response and
20 oversight costs incurred with respect to the implementation of this
21 Order.

22 7. The activities required by this Order are subject to
23 approval by EPA and shall provide all necessary and appropriate
24 information for the RD, consistent with the Record of Decision for
25 the Commencement Bay Nearshore/Tideflats (CB/NT) sediments operable
26 unit of the CB/NT Superfund Site issued by EPA on September 29,
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1 1989, and in accordance with the requirements of CERCLA, as
2 amended, and the National Oil and Hazardous Substances Pollution
3 Contingency Plan (NCP), 40 C.F.R. Part 300, as amended. The
4 activities conducted pursuant to this Order shall be conducted in
5 compliance with all applicable EPA guidances, policies, and
6 procedures.

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8 V. FINDINGS OF FACT

9 8. The Sitcum, Blair, and Milwaukee Waterways are within the
10 boundaries of the Commencement Bay Nearshore/Tideflats (CB/NT)
11 Superfund Site. The CB/NT Superfund Site is located in Tacoma,
12 Washington, at the southern end of the main basin of Puget Sound.
13 Sitcum is one of eight problem areas that together have been
14 designed as Operable Unit One (OU 01) of the CB/NT Superfund Site,
15 which addresses cleanup of 10-12 square miles of shallow water
16 shoreline located in the industrial tideflats area of the active
17 commercial seaport of the City of Tacoma. The marine boundaries
18 of this OU 01 are limited to the shoreline, intertidal areas,
19 bottom sediments, and water of depths less than 60 feet below mean
20 low water.

21 9. On September 8, 1983, EPA placed the CB/NT Site on the
22 National Priorities List pursuant to Section 105 of CERCLA, 42
23 U.S.C. § 9605.

24 10. Under a Cooperative Agreement with EPA, the Washington
25 Department of Ecology (Ecology) conducted a Remedial Investigation
26 and Feasibility Study (RI/FS) of the CB/NT Site. Within the
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1 Tideflats area of the CB/NT Site, the RI/FS evaluated the nature
2 and extent of contamination in the Sitcum, Blair, Milwaukee,
3 Hylebos, St. Paul, Middle, City, and Wheeler-Osgood Waterways. The
4 final RI/FS was made available to the public in February 1989. The
5 contaminants of greatest concern detected in the Sitcum sediments
6 were the metals arsenic, copper, lead, and zinc, and also
7 polynuclear aromatic hydrocarbons, an alkylated benzene isomer, a
8 diterpenoid hydrocarbon, and N-nitrosodiphenylamine, which are
9 known to be toxic to marine life. Arsenic, copper, lead,
10 polynuclear aromatic hydrocarbons, and N-nitrosodiphenylamine are
11 designated as hazardous substances under Sec. 102(a) of CERCLA, as
12 reported at 40 CFR Part 302.2.

13 11. Spilled materials from ore loading and transfer
14 operations, runoff from the ore loading facilities at Terminal 7,
15 and discharges from storm drains, including those owned and
16 operated by the City of Tacoma, were identified as among the
17 potential sources of the contaminants in the Sitcum sediments.
18 Respondent's Terminal 7 occupies the north waterfront of Sitcum
19 Waterway, with facilities for container handling and bulk unloading
20 of alumina, lead, copper, and zinc.

21 12. The RI/FS evaluated contaminants detected at the CB/NT
22 site to identify problem chemicals that pose the greatest
23 environmental risk. The technical approach was to establish cause-
24 and-effect information relating specific chemicals to biological
25 effects in various aquatic organism and to quantifiable human
26 health risks. Problem chemicals were defined as those chemicals
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1 whose concentration exceeded the apparent effects threshold (AET)
2 in a particular problem area in sufficient quantities to restrict
3 biological productivity. The AET was defined as the contaminant
4 concentration above which toxicity or benthic effects are always
5 observed. At the Sitcum Waterway, arsenic and copper were detected
6 at levels exceeding the AET developed during the RI/FS. The
7 cleanup goal for copper was set by the AET value derived for oyster
8 larva abnormality bioassay, and the cleanup goal for arsenic was
9 set by the AET value derived from affects on benthic infaunal
10 abundance.

11 13. On September 29, 1989, EPA issued a Record of Decision
12 (ROD) that selected the remedy for remediation of sediments and
13 sources of contamination in eight problem areas of the Commencement
14 Bay Nearshore/Tideflats (CB/NT) Sediments Operable Unit One of the
15 CB/NT Superfund Site, including the Sitcum Waterway. In the ROD,
16 EPA determined that there are five major elements of the selected
17 remedy for the Site sediments and sources that will be applied, as
18 appropriate, to each Problem Area:

19 a. Site Use Restrictions - To protect human health by
20 limiting access to edible resources prior to and during
21 implementation of source and sediment remedial activities.

22 b. Source Controls - To be implemented to prevent
23 recontamination of sediments.

24 c. Natural Recovery - Included as an optional (and
25 preferred) remediation strategy for marginally contaminated
26 sediments that are predicted to achieve acceptable sediment quality
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1 through burial and mixing with naturally accumulating clean
2 sediments within a ten year period.

3 d. Sediment Remedial Action - To address sediments
4 containing contamination that is not expected to naturally recover
5 within ten years following implementation of all known, available,
6 and reasonable source control measures. For those areas in which
7 natural recovery will not sufficiently reduce contaminant
8 concentrations within the next ten years, the ROD required active
9 sediment cleanup using one of the following four technologies: in-
10 place capping, dredging and confined aquatic disposal, dredging and
11 nearshore disposal, or dredging and upland disposal. The ROD
12 expressed EPA's preference to utilize nearshore disposal in
13 conjunction with existing commercial development projects, and to
14 minimize unnecessary impact to nearshore habitat, consistent with
15 the provisions of the Clean Water Act. The disposal option is to be
16 identified during design of the remedial action.

17 e. Source and Sediment Monitoring - To refine cleanup
18 volume estimates, characterize the effectiveness of source
19 controls, and implement long-term monitoring of the sediment
20 remedial actions(s) to ensure long-term protectiveness of the
21 remedy.

22 14. Based on an evaluation of biological effects during the
23 RI/FS, the ROD established sediment cleanup objectives at the AET
24 value for specific chemicals, as set forth in Table 5 of the ROD,
25 and in Table 1 of the attached Statement of Work (SOW). Copper and
26 arsenic, which were among the chemicals detected at Sitcum at
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1 levels exceeding the AET, were selected as chemical indicators of
2 the most severe environmental contamination associated with
3 biological effects at the Sitcum Waterway. The ROD established the
4 sediment cleanup objectives at 390 (mg/kg dry weight, ppm) for
5 copper and 57 (mg/kg dry weight, ppm) for arsenic, which were the
6 AET values for the respective hazardous substances. The ROD also
7 determined that natural recovery will not sufficiently reduce
8 contaminant concentrations in the Sitcum Waterway within the next
9 ten years, so the ROD required active sediment cleanup with one of
10 the four technology options. Sediments exceeding the long-term
11 cleanup goals for copper and arsenic were found along the entire
12 length of the waterway with especially high concentrations found
13 near the northeast corner and along the northeast embankment. The
14 ROD estimates that approximately 167,000 cubic yards of sediments
15 in the Sitcum Waterway exhibited chemical concentrations exceeding
16 sediment cleanup objectives for arsenic and copper.

17 15. Since 1979, Respondent has proposed to fill a portion of
18 the Milwaukee Waterway with dredge material from the Blair Waterway
19 for expansion of an existing marine terminal and to create a
20 fisheries mitigation project at the mouth of the Milwaukee
21 Waterway. This project was identified in the 1988 Puyallup Land
22 Settlement Agreement, which was incorporated into federal law under
23 the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41,
24 25 U.S.C. 1773). Respondent is the owner of certain subaquatic
25 land (i.e., marine sediments) within the Milwaukee and Blair
26 Waterways.

1 16. Respondent is the owner of certain subaquatic land (i.e.,
2 marine sediments) within Sitcum Waterway and certain upland
3 directly adjacent to the Sitcum Waterway, where certain facilities
4 suspected of releasing hazardous substances into the waterway are
5 located.

6 VI. CONCLUSIONS OF LAW AND DETERMINATIONS

7 17. The Site is a "facility" as defined in Section 101(9) of
8 CERCLA, 42 U.S.C. § 9601(9).

9 18. Substances and constituents thereof at the Site, and
10 substances otherwise found at the Site and identified in paragraphs
11 10, 12, and 14 above, are "hazardous substance(s)" as defined in
12 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute
13 "pollutant(s) or contaminant(s)" which may present an imminent and
14 substantial danger to public health or welfare or the environment,
15 as set forth in Section 104(a)(1) of CERCLA.

16 19. The presence of hazardous substances or pollutants or
17 contaminants at the Site, or the past, present or potential
18 migration of hazardous substances or pollutants or contaminants at
19 or emanating from the Site, constitute an actual and/or threatened
20 "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §
21 9601(22).

22 20. Respondent is a "person" as defined in Section 101(21) of
23 CERCLA, 42 U.S.C. § 9601(21)

24 21. Respondent is a "responsible party" under Section 107(a)
25 of CERCLA, 42 U.S.C. § 9607(a), and a "potentially responsible
26 party" within the meaning of Sections 104(a) and 122(d)(3) of
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1 CERCLA, 42 U.S.C. § 9604(a) and 9622(d)(3).

2 22. The actions required by this Order are necessary to
3 protect the public health or welfare or the environment, are in the
4 public interest, are not inconsistent with CERCLA or the NCP, and
5 will expedite effective remedial action and minimize litigation.
6 The RD will be conducted properly by the Respondent, in accordance
7 with Section 122(a) of CERCLA provided that those actions are
8 conducted as described in Appendix I (the RD Statement of Work) and
9 modifications thereto, and pursuant to all conditions of the Order.

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11 VII. NOTICE TO STATE

12 23. By providing a copy of this Order to the State of
13 Washington through its Department of Ecology (Ecology), EPA is
14 notifying the State of Washington that this Order is being issued
15 and that EPA is the lead agency for coordinating, overseeing, and
16 enforcing the response action required by the Order.

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18 VIII. WORK TO BE PERFORMED

19 24. All work performed pursuant to this Order shall be under
20 the direction and supervision of qualified persons. Within thirty
21 (30) days after the effective date of this Order, and before any
22 work under this Order begins at the Site, Respondent shall submit
23 in writing the names, titles, addresses, and qualifications of all
24 personnel, including contractors, subcontractors, laboratories,
25 and consultants to be used in performing activities pursuant to
26 this Order to EPA. The qualifications of the persons undertaking
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1 the work for Respondent shall be subject to EPA's review, for
2 verification that such persons meet minimum technical background
3 and experience requirements. If Respondent elects to use any
4 additional contractors, subcontractors, or laboratories subsequent
5 to commencement of activities at the Site, Respondent shall submit
6 the information listed in this paragraph to EPA in writing at least
7 ten (10) days prior to any such use. This Order is contingent on
8 Respondent's demonstration to EPA's satisfaction that Respondent
9 is qualified to perform properly and promptly the actions set forth
10 in this Order. If EPA disapproves any of Respondent's contractors,
11 subcontractors, or laboratories, Respondent shall make replacement
12 selection(s) within thirty (30) days of receipt of written
13 disapproval from EPA. If EPA subsequently disapproves of the
14 replacement(s), EPA reserves the right to terminate this Order,
15 conduct a complete RD and/or conduct or authorize any other
16 response activities it deems necessary, and seek costs thereafter
17 and penalties from Respondent.

18 25. The work by the Respondent pursuant to this Order shall
19 be designed to achieve the following standards at the Sitcum
20 Waterway: :

21 a. Remediate contaminated sediments in the Sitcum Waterway
22 to achieve the performance standards of the ROD, and to achieve the
23 Sediment Cleanup Objectives set forth in Figure 1, and in Section
24 II.B. of the SOW.

25 b. For areas requiring active sediment cleanup, evaluate
26 options for in-place capping, dredging and confined aquatic
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1 disposal, dredging and nearshore disposal, or dredging and upland
2 disposal. Options shall be evaluated according to the nine
3 evaluation criteria used for detailed analysis of alternatives, as
4 set forth at 40 CFR 300.430(e)(9), and according to the
5 considerations established in the ROD. Each option shall be
6 assessed to determine whether it attains applicable or relevant and
7 appropriate substantive requirements under federal and
8 environmental laws, including, but not limited to, the following
9 and those listed in the SOW pursuant to this Order:

10 i. The Federal Water Pollution Control Act, 33 U.S.C.
11 1251 to 1387, including Sections 301, 401 and 404, and the Rivers
12 and Harbors Act, 33 U.S.C. 401 et seq.;

13 ii. EPA regulations at 40 CFR Parts 122, 125.120-125,
14 227.22, and 131;

15 iii. The Regulatory Programs of the Corps of Engineers,
16 33 CFR Parts 320 to 330;

17 iv. The Puget Sound Water Quality Act, RCW 90.70, and
18 in particular the Standards for Confined Disposal of Contaminated
19 Sediments, Washington Sediment Management Standards, WAC 173-240,
20 and Confined Disposal Standards;

21 v. The Coastal Zone Management Act, 16 U.S.C. 1451 et
22 seq., the Washington Shoreline Management Act, RCW 90.58, and the
23 local Shoreline Master Program;

24 vi. Puyallup Tribe Water Quality Program (Puyallup
25 Tribal Council Resolution No. 151288C);

vii. Puyallup Tribe of Indians Settlement Act of 1989,
P.L. 101-41, 25 U.S.C.S. 1773;

viii. The Washington Water Pollution Control Act, RCW
90.48;

ix. The Washington Aquatic Lands Act, RCW 79.90;

x. The Washington Hydraulics Act, RCW 75.20;

xi. The Resource Conservation and Recovery Act (RCRA),
42 U.S.C. 6901 et seq., and implementing federal regulations, and
the Washington Solid and Hazardous Waste Management Act, RCW
70.105, and dangerous waste regulations, WAC 173-303.

c. Collect and present information on natural resources
within the Sitcum, Milwaukee, and Blair waterways which meets the
objectives specified in Section IV.C of the SOW, for use by the
federal, state, and tribal natural resource trustees to determine
whether natural resources within these waterways have been injured
by the release of hazardous substances.

26. Respondent shall conduct activities and submit
deliverables for EPA review, comment, approval or modification as
EPA may deem appropriate, as provided in the SOW, which is Appendix
I to this Order and is incorporated into, and made an enforceable
part of this Order by this reference. All such work shall be
conducted in accordance with the requirements of CERCLA, the NCP,
and all applicable EPA guidance, including, but not limited to, the
EPA Superfund Remedial Design and Remedial Action Guidance (RD/RA
Guidance), guidances referenced therein, and guidances referenced
in the SOW, as may be amended or modified by EPA. The general

1 activities Respondent shall perform are identified below, including
2 various deliverables to be submitted by Respondent for EPA review
3 and approval. The specific tasks Respondent shall perform are
4 described more fully in the SOW and guidances. All work performed
5 pursuant to this Order shall be in accordance with the schedules,
6 standards, specifications, and other requirements of this Order,
7 the Pre-Remedial Design Work, and the Remedial Design Work Plan and
8 other deliverables, as initially approved or modified by EPA, or
9 as may be amended or modified by EPA from time to time.

10 a. Remedial Design Phase 1 Sampling and Analysis Plan
11 (Phase 1 SAP). Within 30 days of the effective date of this Order,
12 Respondent shall submit for EPA approval a Phase 1 SAP for remedial
13 design sampling and analysis tasks, a Remedial Design Quality
14 Assurance Plan (QAPP), and a Remedial Design Health and Safety Plan
15 (Health and Safety Plan). The purpose of the Phase 1 SAP is to
16 obtain all information needed to meet the General Program
17 Requirements described in Section IV.A of the SOW, and to meet the
18 data needs described in Section IV.B.1 of the SOW. An additional
19 purpose for development of information under the Phase 1 SAP is to
20 provide data necessary to support the development and evaluation
21 of remedial options and to meet the objectives of the Phase 1 Pre-
22 Remedial Design Evaluation Report. The Phase 1 SAP may focus on
23 a particular disposal option. However, the Phase 1 SAP shall be
24 supplemented, if EPA determines it necessary, to provide additional
25 data collection and analysis for the evaluation and design of other
26 disposal options. The Phase 1 SAP shall include all elements

described in Section IV.D.1 of the SOW. The QAPP shall include all elements described in Section IV.D.2 of the SOW, and the Health and Safety Plan shall include all elements described in Section IV.D.3 of the SOW. Following EPA approval, or modification or revision as required by EPA, the Phase 1 SAP, any supplement to the Phase 1 SAP, the QAPP, and the Health and Safety Plan shall be incorporated in, and be an enforceable part of this Order.

b. Remedial Design Phase 2 Sampling and Analysis Plan

(Phase 2 SAP). Within 30 days of the effective date of the Order, the Respondent shall submit for EPA approval a Phase 2 SAP for remedial design sampling and analysis of all areas in the Sitcum Waterway not included in the Phase 1 SAP. The purpose of the Phase 2 SAP is to obtain all information needed to meet the General Program Requirements described in Section IV.A of the SOW, and to meet the data needs described in Section IV.B.2 of the SOW. An additional purpose for development of information under the Phase 2 SAP is to provide data necessary to determine the need for remediation, and to support the identification and preliminary evaluation of remedial options, pursuant to Section IV.E.5 of the SOW. The Phase 2 SAP Submittal shall include a QAPP, and a Health and Safety Plan that address specific Phase 2 sampling and analysis activities to be undertaken. The Phase 2 SAP, including the QAPP and the Health and Safety Plan, shall include all elements described in Section IV.D.4 of the SOW. Following EPA approval, or modification or revision as required by EPA, the Phase 2 SAP, the QAPP, and the Health and Safety Plan shall be incorporated in,

1 and be an enforceable part of this Order.

2 c. Natural Resource Sampling and Analysis Plan (NR SAP).

3 Within 30 days of the effective date of the Order, the Respondent
4 shall submit to EPA and to the Natural Resource Trustees a NR SAP
5 for all areas in the Sitcum, Blair and Milwaukee waterways. The
6 NR SAP shall be designed to meet the objectives specified in
7 Sections IV.C and IV.D.5 of the SOW, and shall be carried out
8 consistent with, and in the manner described in Figures 3 and 4 of
9 the SOW. The goal of this study is to determine whether or not
10 natural resources in the Sitcum, Blair, and Milwaukee waterways
11 have been injured by the release of hazardous substances. EPA,
12 after a reasonable opportunity for review and comment by the
13 Natural Resource Trustees, may approve the use of historical data
14 to meet specific data objectives described in Section IV.C of this
15 SOW. The NR SAP submittal shall include a QAPP and a health and
16 safety plan that address specific natural resource sampling and
17 analysis activities to be undertaken, and shall include all
18 elements described for Phase 1 SAP activities in Sections IV.D.2
19 (QAPP) and IV.D.3 (Health and safety). Following EPA approval, or
20 modification or revision as required by EPA, after a reasonable
21 opportunity for review and comment by the Natural Resource
22 Trustees, the NR SAP, the QAPP, and the Health and Safety Plan
23 shall be incorporated in, and be an enforceable part of this Order.

24 d. Phase 1 Remedial Design Data Report. Within 120 days
25 of EPA's approval of the final Phase 1 SAP, Respondent shall submit
26 to EPA a report on the results of Phase 1 remedial design sampling
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1 and analysis activities that meets the requirements of Section
2 IV.E.1 of the SOW. To the extent that some results (e.g., those
3 from column leaching tests) are not available within 120 days of
4 approval by EPA of the Phase 1 SAP, the Phase 1 Remedial Design
5 Data Report shall identify all such information and the Respondent
6 shall submit those results as an addendum to the Phase 1 Remedial
7 Design Data Report when they become available.

8 e. Phase 2 Remedial Design Data Report. Within 120 days
9 of EPA's approval of the final Phase 2 SAP, Respondent shall submit
10 to EPA a report on the results of Phase 2 sampling and analysis
11 activities that meets the requirements of Section IV.E.2 of the
12 SOW.

13 f. Natural Resource Data Report. Within 150 days of EPA's
14 approval of the final NR SAP, Respondent shall submit to EPA and
15 the Natural Resource Trustees a report on the results of the
16 natural resources sampling and analysis activities that meets the
17 requirements of Section IV.E.3 of the SOW. To the extent that some
18 analytical results are not available within 150 days of approval
19 by EPA of the NR SAP, the NR Data Report shall identify all such
20 information and the Respondent shall submit those results as an
21 addendum to the NR Data Report when they become available.

22 g. Phase 1 Pre-Remedial Design Evaluation Report. Within
23 30 days after EPA approval of the Phase 1 Remedial Design Data
24 Report, Respondent shall submit for EPA approval a Phase 1 Pre-
25 Remedial Design Evaluation Report. In this draft report,
26 Respondent shall develop and evaluate options for Phase 1
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remediation of contaminated sediments within the Sitcum Waterway which meet the key elements of the selected remedy and cleanup objectives set forth in Section II.A and B of the SOW; which meet the General Program Requirements set forth in Section IV.A of the SOW; and which meet the specific elements described in Section IV.E.4 of the SOW. Respondent's evaluation of the various options shall be conducted in accordance with the CERCLA evaluation criteria used in the Commencement Bay feasibility study, shall be consistent with the ROD, and shall also demonstrate compliance with the substantive requirements of applicable or relevant and appropriate requirements (ARARs). Upon approval by EPA, this report will be published for review during a period for public comment.

Following the period of public comment, EPA may select the remedial option for Phase 1 that was published for comment or require Respondent to modify or revise the Phase 1 Pre-Remedial Design Evaluation Report or remedial option for Phase 1 prior to EPA approval. Upon approval by EPA, the Phase 1 Pre-Remedial Design Evaluation Report and the selected remedial option for Phase 1 shall be incorporated in, and be an enforceable part of this Order.

h. Phase 2 Preliminary Evaluation of Remedial Options Report. Within 30 days of EPA approval of the Phase 2 Remedial Design Data Report, Respondent shall submit for EPA approval a Phase 2 Preliminary Evaluation of Remedial Options Report which meets the key elements of the selected remedy and cleanup

objectives set forth in Section II.A and B of the SOW; which meets the General Program Requirements set forth in Section IV.A of the SOW; and which meets the specific elements described in Section IV.E.5 of the SOW. In this report, Respondent shall identify and perform a preliminary evaluation of remediation options for areas of the Sitcum Waterway not addressed under Phase 1, utilizing the elements of the analysis specified for the Phase 1 Pre-Remedial Design Evaluation Report. Respondent's preliminary evaluation of the various remedial options shall be conducted in accordance with the CERCLA evaluation criteria used in the Commencement Bay feasibility study, shall be consistent with the ROD, and shall also evaluate compliance with the substantive requirements of ARARs.

i. Remedial Design Work Plan. Within 14 days of receipt of EPA selection of the remedial option, Respondent shall submit for EPA approval a remedial design work plan that shall specify and describe all tasks to be accomplished to support the design of the remedial action. The remedial design work plan shall describe how Respondent shall comply with the requirements of Sections II.B, III.B and V of the SOW. Following EPA approval, or modification or revision as required by EPA, the Remedial Design Work Plan shall be incorporated in, and be an enforceable part of this Order.

j. Remedial Design Submittals. Upon approval of the Remedial Design Work Plan, Respondent shall implement the Remedial Design Work Plan. Respondent shall submit all plans, submittals and other deliverables required under Section V of the SOW in accordance with the schedule in Section VII of the SOW. Submittals

shall include:

i. Preliminary Design Documents. In accordance with the schedule in Section VII of the SOW, Respondent shall submit to EPA for approval: (1) the preliminary design documents meeting the requirements specified in Section V.A.1 of the SOW, (2) a draft Construction Quality Assurance Plan meeting the requirements of Section V.B of the SOW, (3) a draft Remedial Action Health and Safety Plan meeting the requirements of Section V.C. of the SOW, and (4) a draft Post-Remedial Action Operations and Maintenance and Monitoring Plan meeting the requirements of Section V.D. of the SOW.

ii. Draft Final/Final Design Documents. In accordance with the schedule in Section VII of the SOW, Respondent shall submit draft and final design documents as described in Section V.A.2 of the SOW upon completion of approximately 95 percent of the design effort. Respondent will submit final design documents incorporating EPA's comments. Following EPA approval, or modification or revision as required by EPA, the Remedial Design Documents shall be incorporated in, and be an enforceable part of this Order.

27. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondent shall fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables. For each and every deliverable,

1 report, memorandum, plan, or other item required under this Order,
2 if EPA disapproves or requires modification or revision of any
3 deliverable, report, memorandum, plan, or other item, in whole or
4 in part, Respondent shall submit a modified or revised version
5 thereof to EPA which is responsive to all EPA directions, comments,
6 or requirements within thirty (30) days after receiving such
7 directions, comments or requirements from EPA, unless a shorter or
8 longer time is specified by EPA.

9 28. EPA reserves the right to stop Respondent from proceeding
10 at any time, either temporarily or permanently, on any task(s),
11 activity(s) or deliverable(s) at or relating to the Site and/or the
12 implementation of this Order.

13 29. If Respondent modifies or revises any deliverable, report,
14 plan, or other submittal after receipt of EPA comments, directions,
15 or requirements, and EPA subsequently disapproves the revised
16 submittal, or if subsequent submittals do not, in EPA's judgment,
17 adequately address EPA's comments, directions or requirements for
18 changes, EPA may seek stipulated or statutory penalties; perform
19 its own studies; complete the RD (or any portion of the RD); and/or
20 take any response action at the Site it deems necessary, in
21 accordance with its authority, and seek reimbursement from
22 Respondent for its costs therefor; and/or seek any other
23 appropriate relief.

24 30. In the event EPA takes over or causes others to perform
25 some tasks, but does not remove Respondent's duty to prepare the
26 RD pursuant to this Order, Respondent shall incorporate and
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1 integrate information supplied by EPA as directed by EPA.

2 31. The absence of express EPA comment, approval or
3 disapproval of any submission within any specified time period
4 shall not be construed as approval by EPA. Respondent is
5 responsible for the timely preparation of deliverables acceptable
6 to EPA.

7 32. Respondent shall, prior to the shipment of hazardous
8 substances from the Site to an out-of-state waste management
9 facility, submit written notification, as set forth below, to the
10 appropriate state environmental official in the receiving state,
11 and to the EPA Project Coordinator. This notification requirement
12 shall not apply when the total volume of such a shipment will not
13 exceed ten (10) cubic yards. Notification shall include: 1) the
14 name and location of the receiving facility; (2) the type and
15 quantity of hazardous substances to be shipped; (3) the expected
16 shipment schedule; and (4) the mode of transportation. Respondent
17 shall submit written notification of any changes in the shipment
18 plan as set forth in the notification. Notification of the
19 selection of the receiving facility and state shall be made at
20 least thirty (30) days before any hazardous substances are actually
21 shipped.

22 IX. MODIFICATION OF THE WORK PLAN

23 33. If at any time, Respondent identifies a need for
24 additional data, Respondent shall submit a memorandum to the EPA
25 Project Coordinator within twenty (20) days after such need has
26 been identified explaining the need for and the nature of the data.

1 sought. EPA in its discretion will determine whether the
2 additional data shall be collected by Respondent and whether it
3 shall be incorporated into reports and deliverables.

4 34. In addition to the requirements of Section 103 of CERCLA,
5 42 U.S.C. § 9603, and all other statutory or regulatory reporting
6 requirements, Respondent shall immediately notify EPA and Ecology
7 of any conditions at the Site which may pose an immediate threat
8 to human health or welfare or the environment. In the event of
9 unanticipated or changed circumstances at the Site, Respondent
10 shall notify the EPA Project Coordinator by telephone within 24
11 hours of discovery of the unanticipated or changed circumstances.
12 If, for any reason, the EPA Project Coordinator cannot be reached,
13 Respondent shall as immediately as possible thereafter notify the
14 EPA Region 10 Superfund Branch Chief, or leave detailed messages
15 with both of their respective offices if neither can be reached.
16 In addition to the authorities of the NCP, EPA may modify or amend
17 any work to be performed pursuant to this Order or require
18 additional work if EPA determines that such modification or
19 amendment is warranted by the immediate threat or in response to
20 unanticipated or changed circumstances. Respondent shall perform
21 such modified or additional work.

22 35. EPA may determine that in addition to tasks defined in the
23 SOW and in the approved Remedial Design Work Plan, other additional
24 work may be necessary to accomplish the objectives of the RD as set
25 forth in ROD, this Order, and the SOW. EPA may require Respondent
26 to perform such additional work or other response activity in
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1 addition to the work initially approved or modified, if EPA
2 determines that such actions are necessary for a complete RD.
3 Respondent shall confirm its willingness to perform any such
4 additional work in writing within seven (7) days after receipt of
5 the EPA request, or properly invoke the dispute resolution
6 procedures set forth in Section XVII of this Order. Subject to the
7 resolution of any dispute, Respondent shall implement the
8 additional tasks EPA determines are necessary. The additional work
9 shall be completed according to the standards, specifications, and
10 schedule set forth or approved by EPA. EPA reserves the right to
11 conduct all or part of such work itself, to seek reimbursement of
12 costs from Respondent, and/or to seek any other appropriate relief.

13 14 X. QUALITY ASSURANCE

15 36. Respondent shall assure that all work performed, samples
16 taken and analyses conducted, conform to the requirements of the
17 SOW, the QAPP approved by EPA, and guidances identified therein,
18 and that all field personnel shall be properly trained for each
19 task they may perform and in the use of field equipment, including
20 strict adherence to EPA chain of custody procedures.

21 22 XI. FINAL REMEDIAL DESIGN

23 37. EPA retains full authority and responsibility for all
24 aspects of public participation including the release to the public
25 of the Phase 1 Pre-Remedial Design Evaluation Report and the final
26 Remedial Design Reports, as set forth in CERCLA and the NCP. As
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1 requested by EPA, Respondent shall provide information supporting
2 EPA's community relations programs related to the Site, and shall
3 participate in public meetings which may be held or sponsored by
4 EPA to explain activities at or concerning the Site.

5 38. EPA shall provide Respondent with the copies of the final
6 reports, as approved by EPA.

7 39. EPA will determine the contents of the administrative
8 record file for the selection of remedial action. Respondent shall
9 submit documents developed during the course of the RD to EPA upon
10 which approval of the final remedial design may be based. Upon
11 request by EPA, Respondent shall submit copies of plans, task
12 memoranda, including all documentation of field modifications,
13 recommendations for further action, quality assurance memoranda and
14 audits, raw data, field notes, laboratory analytical reports, and
15 other reports to EPA. Respondent shall also submit any previous
16 studies conducted under state, local or other federal authorities
17 relating to response selection, and all communications between
18 Respondent and state, local or other federal authorities concerning
19 response selection. EPA shall maintain a community information
20 repository at or near the Site to house a copy of the
21 administrative record.

22 23 XII. PROGRESS REPORTS AND MEETINGS

24 40. Respondent shall make presentations at, and participate
25 in, meetings and telephone conferences at the request of EPA during
26 the initiation, conduct, and completion of the RD. In addition to
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1 discussion of the technical aspects of the RD, topics will include
2 anticipated problems or new issues. Meetings and telephone
3 conferences will be scheduled at EPA's discretion.

4 41. In addition to the deliverables set forth in this Order,
5 until the termination of this Order, Respondent shall provide
6 quarterly progress reports to EPA by the 10th day of each quarter
7 following the effective date of this Order. These progress reports
8 shall: (1) describe the actions which have been taken to comply
9 with this Order during the previous quarter, (2) include all
10 results of sampling and tests and all other data received by the
11 Respondent, (3) describe all work planned for the next quarter with
12 schedules relating such work to the overall project schedule,
13 including percentage of completion data; (4) describe all problems
14 encountered and any anticipated problems, any actual or anticipated
15 delays, and all solutions developed and implemented or planned to
16 address any actual or anticipated problems or delays; and (5)
17 include all other elements specified in Section VI of the SOW.

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19 XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

20 42. All results of sampling, tests, modeling or other data
21 (including all raw data and all laboratory analytical reports)
22 generated by Respondent, or on Respondent's behalf, during
23 implementation of this Order, shall be submitted to EPA in the
24 subsequent quarterly progress report as described in Section XII
25 of this Order. EPA will make available to the Respondent validated
26 data generated by EPA unless it is exempt from disclosure by any
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1 federal or state law or regulation.

2 43. Respondent shall notify EPA at least fourteen (14) days
3 prior to conducting any field events described in the SOW, Remedial
4 Design Work Plan, or any approved sampling and analysis plan. At
5 EPA's verbal or written request, or the request of EPA's Project
6 Coordinator or designee, Respondent shall allow split or duplicate
7 samples to be taken by EPA (and its authorized representatives and
8 designees) and the Natural Resource Trustees of any samples
9 collected by the Respondent in implementing this Order. All of
10 Respondent's split samples shall be analyzed by the methods
11 identified in the QAPP.

12 44. EPA and its designated representatives, and
13 representatives of the Natural Resource Trustees, shall have full
14 access to, and authority to freely move about all property at the
15 Site and off-site areas where work is to be carried out pursuant
16 to this Order, for purposes of inspecting conditions, activities
17 in implementing the requirements of this Order, records, operating
18 logs, and contracts related to the Site or Respondent or its
19 contractor pursuant to this Order; reviewing the progress of the
20 Respondent in carrying out the terms of this Consent Order;
21 conducting tests as EPA or its authorized representatives or
22 designees deem necessary; using a camera, sound recording device
23 or other documentary type equipment; and verifying the data
24 submitted to EPA by the Respondent. The Respondent shall allow
25 these persons to inspect and copy all records, files, photographs,
26 documents, sampling and monitoring data, and other writings related
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1 to work undertaken in carrying out this Order. Copies of all other
2 information or records created, maintained or received by
3 Respondent or its agents, employees, accountants, contractors or
4 consultants which is in any way related to the implementation of
5 this Order, including: contractual documents, invoices, receipts,
6 work orders, disposal records, and any other records or documents
7 not previously required herein shall promptly be made available to
8 EPA on request as soon as practicable, but in any event within
9 thirty (30) days of Respondent's receipt of EPA's request.
10 Nothing herein shall be interpreted as limiting or affecting EPA's
11 right of entry or inspection authority under federal law. All
12 persons with access to the Site under this paragraph shall comply
13 with all approved health and safety plans, and shall notify
14 Respondent upon entry, to the extent practicable.

15 45. Respondent may assert a claim of business confidentiality
16 covering part or all of the information submitted to EPA pursuant
17 to this Order in accordance with Section 104(e)(7) of CERCLA, 42
18 U.S.C. § 9604(e)(7), and 40 C.F.R. Part 2, Subpart B. This claim
19 shall be asserted in the manner described by 40 C.F.R. 2.203(b),
20 and substantiated when made. If no such claim accompanies the
21 information when it is submitted to EPA, it may be made available
22 to the public by EPA without further notice to Respondent.
23 Respondent agrees not to assert any confidentiality claim with
24 respect to any data related to Site conditions, sampling, or
25 monitoring.

1 46. Respondent shall not object to any use of any data
2 gathered, generated, or evaluated by EPA, Ecology, or Respondent
3 in the performance or oversight of any work which has been verified
4 according to the quality assurance/quality control (QA/QC)
5 procedures required by this Order or any EPA-approved work plan or
6 sampling and analysis plan, or which is contained in a report
7 submitted by Respondent and approved by EPA under this Order. If
8 Respondent objects to any use of any other data relating to the RD,
9 Respondent shall submit a report to EPA which identifies and
10 explains Respondent's objections, describes any proposed acceptable
11 uses of the data, and specifically identifies any proposed
12 limitations on the use of the data. This report must be submitted
13 to EPA within fifteen (15) days after the quarterly progress report
14 containing the data.

15 47. If the Site areas that are to be used for access or are
16 within the scope of the RD, are owned in whole or in part by
17 parties other than Respondent or the United States, Respondent
18 shall obtain, or use its best efforts to obtain, written site
19 access agreement(s) from the present owner(s) within 30 days of the
20 effective date of this Order. Such agreement(s) shall provide
21 access for EPA, its contractors and oversight officials, Ecology
22 and its contractors, and Respondent and its authorized
23 representatives, and shall specify that Respondent is not EPA's
24 representative with respect to any liability associated with
25 activities required by this Order. Copies of all such agreements
26 shall be provided to EPA prior to the initiation of any field
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activities. Respondent's best efforts shall, if necessary, include providing reasonable compensation to any property owner for access. If Respondent is unable to obtain access agreements with the time reference above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for Respondent, or perform tasks or activities under its own authority, or terminate this Order in the event Respondent cannot obtain access agreements. In the event EPA performs any tasks or activities and does not terminate this Order, Respondent shall perform all other activities not requiring such access, and shall reimburse EPA for all costs EPA incurs in performing any tasks or activities. Respondent shall integrate the results of any tasks or activities undertaken by EPA into Respondent's deliverables. Furthermore, the Respondent agrees to indemnify the United States for any liability arising out of the performance of any such tasks or activities by EPA to the extent set forth in paragraph 90 of this Order. Respondent shall also reimburse EPA for all costs and attorney fees incurred by the United States to obtain access pursuant to Paragraph 70 of this Order.

XIV. DESIGNATED PROJECT COORDINATORS

48. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Order, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which Respondent and EPA designate in writing:

1 a. Four (4) copies of documents to be submitted to EPA
2 shall be forwarded to:

3 Peggy Justus, HW-113,
4 U.S. EPA, Region 10
5 1200 Sixth Avenue
6 Seattle, WA 98101

7 b. One (1) copy of documents to be submitted to Ecology
8 shall be forwarded to:

9 Kevin Godbout
10 Washington Department of Ecology
11 Industrial Section
12 PV-11
13 Olympia, Washington 98504

14 c. One (1) copy of documents to be submitted to the Natural
15 Resource Trustees shall be forwarded to:

16 Chris Mebane (NOAA)
17 c/o EPA-Region 10
18 HW 113
19 1200 Sixth Avenue
20 Seattle, Washington 98101

21 Fred Gardner
22 Washington Department of Ecology
23 PV-11
24 Olympia, Washington 98504-8711

25 Bill Sullivan
26 Environmental Programs
27 Puyallup Tribe of Indians
28 2002 East 28th Street
Tacoma, Washington 98404

Morgan Bradley
Muckleshoot Indian Tribe
(b) (6)
Auburn, Washington 98002

David Frederick
U.S. Fish & Wildlife Service
Division of Ecological Services
2625 Parkmont Lane SW
Olympia, Washington 98502

d. Documents to be sent to Respondent shall be forwarded
to:

Richard Gilmur
Port of Tacoma
P.O. Box 1837
Tacoma, Washington 98401

49. On or before the effective date of this Order, EPA and Respondent shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. To the extent possible, communications between Respondent and EPA shall be directed to the Project Coordinators by mail, with copies to such other persons as EPA may designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

50. Prior to commencement of any activities at the Site, Respondent shall submit the name, title, qualifications, experience, professional affiliations, and background, of the individual selected as Respondent's Project Coordinator to EPA in writing. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

51. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP, and shall have the authority, in accordance with the requirements of the NCP, to halt any work required by this Order and to take any necessary response action when he or she determines conditions at the Site may present an imminent and substantial endangerment to the public health or

1 welfare or the environment. The absence of the EPA Project
2 Coordinator from the area under study pursuant to this Order shall
3 not be cause for any stoppage or delay of any work.

4 52. EPA shall arrange for a qualified person to assist in its
5 oversight and review of the conduct of the RD, as authorized by
6 Section 104(a) of CERCLA, 42 U.S.C. §.9604(a). The oversight
7 assistant may observe work and make inquiries in the absence of
8 EPA, but is not authorized to modify any work plan.

9
10 XV. OTHER APPLICABLE LAWS

11 53. All actions required to be taken pursuant to this Order
12 shall be performed in accordance with the requirements of all
13 applicable local, state, and federal laws and regulations. No
14 local, state, or federal permit shall be required for any portion
15 of any activity pursuant to this Order conducted entirely on-Site.
16 Off-Site disposal of hazardous substances shall comply with all
17 applicable provisions of CERCLA, RCRA, the implementing regulations
18 respectively thereunder, and EPA guidances and policies.

19
20 XVI. RECORD PRESERVATION

21 54. All records and documents created by Respondent, or on
22 Respondent's behalf, which relate in any way to the implementation
23 of this Order, shall be preserved by Respondent for a minimum of
24 six (6) years after commencement of construction of any remedial
25 action at the Site. After this six (6) year period, Respondent
26 shall notify EPA at least ninety (90) days before any records are
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1 scheduled to be destroyed. If EPA requests that the documents be
2 saved, Respondent shall, at no cost to EPA, give EPA the documents
3 or true and accurate copies of the documents.

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5 XVII. DISPUTE RESOLUTION

6 55. Any disputes concerning activities or deliverables
7 required under this Order shall be resolved as follows: If the
8 Respondent objects to any EPA notice of disapproval or requirement
9 made pursuant to this Order, Respondent shall notify EPA's Project
10 Coordinator in writing of its objections within 14 days of receipt
11 of the disapproval notice or requirement. Respondent's written
12 objection shall define the dispute, state the basis of Respondent's
13 objections, and be sent certified mail, return receipt requested.
14 EPA and Respondent have an additional 14 days from EPA's receipt
15 of Respondent's notification to resolve the dispute. If an
16 agreement is not reached within this 14 day period, Respondent may
17 request a determination by EPA's Region 10 Superfund Branch Chief.
18 The Branch Chief's determination is EPA's final decision.
19 Respondent shall proceed in accordance with EPA's final decision
20 regarding the matter in dispute, regardless of whether Respondent
21 agrees with the decision. If Respondent does not agree to perform
22 or does not actually perform the work in accordance with EPA's
23 final decision, EPA reserves the right in its sole discretion to
24 conduct the work itself, to seek reimbursement from the Respondent
25 from the Respondent, to seek enforcement of the decision, to seek
26 stipulated penalties, and/or to seek any other appropriate relief.

1 56. Respondent is not relieved of its obligations to perform
2 and conduct activities and submit deliverables in accordance with
3 any schedules incorporated into or developed pursuant to this
4 Order, while a matter is pending in dispute resolution. The
5 invocation of dispute resolution does not stay stipulated penalties
6 under this Order.

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8 XVIII. STIPULATED PENALTIES

9 57. For each day that Respondent fails to complete a
10 designated deliverable in a timely manner, fails to produce a
11 designated deliverable of acceptable quality to EPA, or otherwise
12 fails to perform in accordance with the requirements of this Order,
13 Respondent shall be liable for stipulated penalties in accordance
14 with this Section. Penalties shall begin to accrue on the day that
15 performance is due or a violation occurs, and extent through the
16 period of correction. Where a revised submission by Respondent is
17 required, stipulated penalties shall continue to accrue until a
18 satisfactory deliverable is produced. EPA will provide written
19 notice for violations that are not based on timeliness;
20 nevertheless, penalties shall accrue from the day a violation
21 commences, regardless of when or whether notice is provided.
22 Payment shall be due within thirty (30) days after receipt of a
23 demand letter from EPA.

24 58. Respondents shall pay interest on the unpaid balance,
25 which shall begin to accrue at the end of the thirty (30) day
26 period, at the rate established by the Department of Treasury
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1 pursuant to 30 U.S.C. § 3717. Respondent shall further pay a
2 handling charge of one (1) percent, to be assessed at the end of
3 each 31 day period, and a six (6) percent per annum penalty charge,
4 to be assessed if the penalty is not paid in full within ninety
5 (90) days after it is due.

6 59. Respondent shall make all payments by forwarding a check
7 to:

8 U.S. Environmental Protection Agency
9 Region 10 Superfund Accounting
P.O. Box 371003M
10 Pittsburgh, Pennsylvania 15251

11 Checks should state the name of the Site, the Site identification
12 number, the account number, and the title and docket number of this
13 Order. A copy of the check and accompanying transmittal letter
14 shall be forwarded to the EPA Project Coordinator.

15 60. For the submission of draft and revised major deliverables
16 described in Paragraph 25 of this Order, stipulated penalties shall
17 accrue in the amount of \$500 per day, per violation, for the first
18 seven (7) days of noncompliance; \$1,000 per day, per violation, for
19 the eighth (8th) through fourteenth (14th) day of noncompliance;
20 \$2,500 per day, per violation, for the fifteenth (15th) day through
21 the thirtieth (30th) day; and \$5,000 per day, per violation, for
22 the thirtieth (30th) day through the ninetieth (90th) day.

23 61. For the quarterly progress reports, and for any failure to
24 perform in accordance with the requirements of this Order,
25 stipulated penalties shall accrue in the amount of \$250 per day,
26 per violation, for the first seven (7) days of noncompliance; \$500
27 per day, per violation, for the eighth (8th) through fourteenth
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(14th) day of noncompliance; \$2,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day; and \$5,000 per day, per violation, for the thirtieth (30th) day through the ninetieth (90th) day.

62. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties shall accrue but need not be paid during a properly invoked dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due within thirty (30) days after resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

63. In the event EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of the initial deliverable, stipulated penalties for the initial deliverable shall cease to accrue on the day of such decision by EPA.

64. If Respondent fails to pay stipulated penalties assessed under this Section, the stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Order, including but not limited to conduct of all or part of the RD by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Order.

XIX. FORCE MAJEURE

65. Force majeure , for purposes of this Order, is defined as any event arising from causes entirely beyond the control of Respondent or any entity controlled by Respondent, including Respondent's agents, consultants, contractors and subcontractors, which delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid such delay. The requirement that Respondent use best efforts to avoid the delay includes using best efforts to anticipate potential force majeure events and using best efforts to address the effects of any force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order, or the financial difficulty of Respondent to perform any such work.

66. If any event occurs or has occurred which may delay the performance of any obligation under this Order, regardless of whether caused by a force majeure event, Respondent shall verbally notify the EPA Project Coordinator or, in his or her absence, the Chief of the Superfund Branch, EPA Region 10, within 48 hours after Respondent knew or should have known that any event might cause a delay. Within 7 thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for the implementation of any measures to be taken to

1 mitigate the effect of the delay; and a statement as to whether
2 Respondent believes the event may cause or contribute to an
3 endangerment to public health, welfare or the environment.
4 Respondent shall exercise best efforts to avoid or minimize any
5 delay and any effects of any delay. Failure to comply with the
6 above requirements shall preclude Respondent from asserting any
7 claim of force majeure.

8 67. If EPA agrees that the delay or anticipated delay is
9 attributable to force majeure, the time for performance of the
10 obligations under this Order that are directly affected by the
11 force majeure event shall be extended by EPA for a period not to
12 exceed the actual duration of the delay attributed to the force
13 majeure event. An extension of the time for performance of the
14 obligation directly affected by the force majeure event shall not
15 extend the time for performance of any other obligations.

16 68. If EPA does not agree that the delay or anticipated delay
17 has been or will be caused by a force majeure event, or does not
18 agree with Respondent as to the appropriate length of any extension
19 due to force majeure, the issue shall be subject to the dispute
20 resolution procedures set forth in Section XVII of this Order. In
21 dispute resolution, Respondent shall have the burden of
22 demonstrating by a preponderance of the evidence that the delay or
23 anticipated delay has been or will be caused by a force majeure
24 event, that the duration of the delay was or will be warranted
25 under the circumstances, that Respondent did exercise or is
26 exercising due diligence by using its best efforts to avoid and
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mitigate the effects of the delay, and that Respondent has complied with all of the requirements of paragraph 65 above.

69. Should Respondent carry the burden set forth in Paragraph 66, the delay at issue shall be deemed not to be a violation of the affected obligation of this Order.

XX. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

70. Following the issuance of this Order, EPA shall submit to the Respondent on a annual basis an accounting of all response costs, including oversight costs, incurred by the United States which relate to the RD work under this Order. Such response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order, and activities performed by the United States as part of the RD and community relations, including any costs incurred to obtain access. Costs shall include all direct and indirect costs, including but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RD activities, Site visits, discussions regarding disputes that may arise regarding this Order, review and approval or disapproval of submissions, and costs of doing or redoing any of Respondent's tasks. Summaries, including EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as a basis for payment

1 demands by EPA.

2 71. Respondent shall within thirty (30) days of receipt of
3 each accounting, remit a certified or cashier's check for the
4 amount of costs set forth in EPA's accounting. Interest shall
5 accrue from the later of: the date payment of a specified amount
6 is demanded in writing; or the date of the expenditure. The
7 interest rate shall be the rate of interest on investments for the
8 Hazardous Substances Superfund in Section 107(a) of CERCLA, 42
9 U.S.C. § 9607(a).

10 72. Checks should be made payable to the Hazardous Substances
11 Superfund and should state the name of the Site, the Site
12 identification number, the account number, and the title and docket
13 number of this Order. Checks should be forwarded to:

14 U.S. Environmental Protection Agency
15 EPA Region 10 Superfund Accounting
16 P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

17 73. Copies of the transmittal letter and check should be sent
18 simultaneously to the EPA Project Coordinator.

19 74. Respondent agrees to limit any disputes concerning costs
20 to accounting errors and the inclusion of costs outside the scope
21 of this Order. Respondent shall identify any contested costs and
22 the basis of its objection in writing. All undisputed costs shall
23 be remitted by Respondent in accordance with the schedule set forth
24 above. Disputed costs shall be paid into an escrow account by
25 Respondent while any such dispute is pending. Respondent bears
26 the burden of establishing an EPA accounting error or the inclusion
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of any cost outside the scope of this Order. Interest shall accrue during any cost dispute.

XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

75. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA; 42 U.S.C. § 9607, for recovery of all response costs incurred by the United States which are not reimbursed by Respondent, including past costs, oversight costs, any costs incurred in the event that EPA performs the RD or any part thereof, and any future costs incurred by the United States in connection with response activities under CERCLA at the Site.

76. EPA reserves the right to bring an action against Respondent to enforce any provision or requirement of this Order or any requirement developed pursuant to this Order, to enforce the cost reimbursement requirements of this Order, to collect stipulated penalties assessed pursuant to Section XVIII (Stipulated Penalties) of this Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

77. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Order shall affect EPA's response, enforcement or other statutory and/or regulatory authority, including the right to perform response activities or to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

78. Following satisfaction of the requirements of this Order,

Respondent shall have resolved its liability to EPA for the work performed by Respondent pursuant to this Order. Respondent is not released from any liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial action of the Sitcum Waterway, or any activities pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

XXII. DISCLAIMER

79. By signing this Order and taking actions under this Order, the Respondent is not concurring in EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondent in this Order shall not be considered an admission of liability and is not admissible as evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by EPA or the United States to enforce this Order or any judgment relating to it. Respondent retains its rights to assert claims against other potentially responsible parties at the site. However, the Respondent agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXIII. OTHER CLAIMS

80. In entering into this Order, Respondent waives any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondent also waives any right to present a claim under

1 Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611, 9612. Respondent
2 further waives all other statutory and common law claims against
3 EPA, including, but not limited to, contribution and counterclaims,
4 relating to or arising out of conduct of the RD. This Order does
5 not constitute any decision on preauthorization of funds under
6 Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

7 81. Nothing in this Order shall constitute or be construed as
8 a release from any claim, cause of action or demand in law or
9 equity against any person, firm, partnership, subsidiary or
10 corporation not a signatory to this Order for any liability it may
11 have arising out of or relating in any way to the generation,
12 storage, treatment, handling, transportation, release, or disposal
13 of any hazardous substances, pollutants, or contaminants at, from,
14 or taken to the Site.

15 82. Respondent shall not seek to recover any costs or
16 attorneys fees from EPA or the United States with regard to any
17 matter connected with implementation of this Order.

18
19 XXIV. EFFECTIVE DATE AND SUBSEQUENT AMENDMENT

20 83. The effective date of this Order shall be the date it is
21 signed by EPA. Except when expressly stated otherwise herein, all
22 time periods referred to in this Order shall be construed as
23 calendar days, rather than business or working days. Any time
24 period scheduled to begin on the occurrence of an act or event
25 shall begin on the day after the act or event. If the final day
26 of any time period falls on a Saturday, Sunday, or legal holiday,
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1 the time period shall be extended to the next day which is not a
2 non-final day.

3 84. In addition to the procedures set forth elsewhere in this
4 Order, this Order may be amended by agreement between EPA and
5 Respondent. Amendments shall be in writing and shall be effective
6 when signed by EPA. EPA Project Coordinators do not have the
7 authority to sign any amendment to this Order.

8 85. No informal advice, guidance, suggestions, or comments by
9 EPA regarding reports, plans, specifications, schedules, or any
10 other writing submitted by Respondent will be construed as
11 relieving Respondent of its obligation to obtain such formal
12 approval as may be required by this Order. Any deliverables,
13 plans, technical memoranda, reports (other than quarterly progress
14 reports) specifications, schedules and attachments required by this
15 Order or developed pursuant to this Order, are, upon approval by
16 EPA, incorporated in, and made an enforceable part of, this Order
17 by this reference.

18
19 XXVI. TERMINATION AND SATISFACTION

20 86. This Order shall terminate when either (1) Respondent
21 demonstrates in writing and certifies to the satisfaction of EPA
22 that all activities required by this Order, including any
23 additional work, payment of all costs, and any stipulated penalties
24 demanded by EPA, have been performed, and EPA has approved the
25 certification set forth in paragraph 91 below; or (2) the
26 obligation for any remaining work required by this Order is assumed
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1 under a different agreement with EPA that is in full force and
2 effect. Respondent's obligation to comply with Sections XVI
3 (Record Preservation), XX (Reimbursement of Response and Oversight
4 Costs), and XXI (Reservations of Rights and Reimbursement of Other
5 Costs), of this Order shall remain in full force and effect without
6 time or other limitation.

7 87. The following certification shall be signed by a
8 responsible official on behalf of Respondent:

9 In accordance with 28 U.S.C. § 1746, I certify under penalty of
10 perjury under the laws of the United States that the information
11 contained in and accompanying this certification is true, accurate,
12 and complete. Dated this 29th day of March, 1991.

13 For purposes of this Order, a responsible official is a corporate
14 official in charge of a principal business function.

15
16 IT IS SO ORDERED, this 29th day of March, 1991.

17
18 UNITED STATES ENVIRONMENTAL
19 PROTECTION AGENCY

20
21 By: 

22 Philip G. Millam, Chief
23 Superfund Branch
24 EPA Region 10

25 RESPONDENT hereby consents to the issuance of this ORDER,
26 and agrees to abide by each and every provision herein, and to
27 perform each and every task or requirement herein.
28

1 RESPONDENT hereby consents to the issuance of this ORDER,
2 and agrees to abide by each and every provision herein, and to
3 perform each and every task or requirement herein.

BY: DATE: 3/21/91

(NAME)

Title: Acting President
Port of Tacoma